

July 6 2010

*Ed Smith*  
CLERK OF THE SUPREME COURT  
STATE OF MONTANA

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FILED

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CLERK OF THE SUPREME COURT  
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No DA-10-0287

DALE L. KEIL,

Appellant.

IN THE MATTER OF THE ESTATE OF  
JAMES R. BREWSTER,

Deceased,

Appellee,

**MOTION FOR STAY OF EXECUTION OF JUDGMENT AND  
APPROVAL OF SUPERSEDEAS BOND**

On Appeal from the Montana Ninth Judicial District Court, Teton County,  
The Honorable Laurie McKinnon, Presiding  
Cause No. DP-07-08

COMES NOW Dale L. Keil and respectfully moves this Court, pursuant to Rule 22(2) Mont. R. App. P. to stay, pending and during appeal, the judgment entered as the court's Order for Reimbursement of Attorney Fees in Excess of Statutory Fees, dated June 1, 2010 (filed June 1, 2010) and for approval of the Supersedeas Bond. In support of the Motion, Appellant states that, if obtained, the Appellee will most likely disburse the funds to Billie Brewster, surviving spouse; that if Appellant is successful, Billie Brewster may not be able to repay

1 the amounts; and that the Estate of James R. Brewster has been distributed;  
2 therefore, no repayment would be possible.

3 **SHORT STATEMENT OF MOTION**

4 Notice of Appeal was filed with the Supreme Court on June 10, 2010 and  
5 with the District Court on June 11, 2010. On June 11, 2010 Dale L. Keil filed a  
6 Motion For Stay of Execution of Judgment and Approval of Supersedeas Bond  
7 with the Ninth Judicial District Court. (See Exhibit 4) The District Court entered  
8 its Order on June 23, 2010 denying Mr. Keil's Motion. (See Order Denying  
9 Request For Stay And Approval Of Supersedeas Bond attached as Exhibit 1).

10 The Affidavit of Dale L. Keil is attached as Exhibit 5.

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12 **MEMORANDUM IN SUPPORT OF MOTION**

13 Appellant filed a Motion for Stay of Execution of Judgment and a proposed  
14 supersedeas bond with the District Court on June 1, 2010. The District Court  
15 denied the Motion and the bond. (See Exhibit 1)

16 Rule 22 Mont. R. App. P. requires a litigant seeking a stay of order pending  
17 and during appeal and approval of a supersedeas bond to request the stay and bond  
18 approval first from the District Court. Rule 22 (1)(a) i, ii Mont. R. App. P. (2009).

19 The rule provides that the District Court "retains the power to entertain and rule  
20 upon a motion filed pursuant to this rule despite the filing of a notice of appeal..."  
21 Rule 22 (1)(c) MT R. App. P. (2009). The appellant must obtain the district  
22 court's approval of the supersedeas bond. Rule 22 (1) (c). Finally, the rule  
23 requires the District Court to "promptly enter a written order on a motion filed  
24 under this rule and include in findings of fact and conclusions of law, or in a  
25 supporting rationale, the relevant facts and legal authority on which the District  
26 Court's order is based," Rule 22 (1) (d).

27 The District Court allowed time for parties to object and Billie Brewster,  
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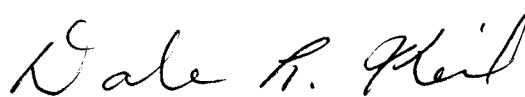
1 surviving spouse, did object. Appellant argues that there is no right to object at  
2 the District Court level. The Motion for Stay of Execution of Judgment was  
3 denied on June 23, 2010. (See Exhibit 1).

4 Rule 22 (2) MT R. App. P. (2009) provides that on the grant or denial of a  
5 motion for relief under section (1)(a) of this rule, a motion for relief from the  
6 district court order may be filed in the supreme court within 11 days of the date of  
7 entry of the district court order. The Motion must demonstrate good cause for the  
8 relief requested, supported by affidavit; must include copies of relevant documents  
9 from the record; and must include a copy of the district court's order issued  
10 pursuant to section (1)(d) of this rule.

11 This Court ruled in *183 Mont. 439, 600 P.2d 206* that "The purpose of a  
12 supersedeas bond as a condition for staying enforcement and execution on a  
13 judgment is to guarantee and secure the rights of the judgment creditor during the  
14 appeal process. At the same time it preserves and implements the judgment  
15 debtor's statutory right of appeal. It is well established that a supersedeas bond  
16 may be required to preserve the rights of the unsuccessful party. *Gallatin Trust*  
17 *and Savings Bank v. Henke (1969), 154 Mont. 170, 461 P.2d 448, and cases*  
18 *therein cited.*"

19 The appellant does not want to risk that the Estate may execute on  
20 Appellant's property during the pendency of the appeal, and that the appeal might  
21 become moot as argued *In re the Marriage of Gorton, 2008 MT 123, 342 Mont.*  
22 *537, 182 P.3d 746.* Appellant requests that the Motion for Stay of Execution of  
23 Judgment be granted preserving his statutory right of appeal.

24 DATED this 3rd day of July, 2010.

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27 Dale L. Keil, Pro Se  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have filed a true and accurate copy of the foregoing MOTION FOR STAY OF EXECUTION OF JUDGMENT AND APPROVAL OF SUPERSEDEAS BOND with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing MOTION FOR STAY OF EXECUTION OF JUDGMENT AND APPROVAL OF SUPERSEDEAS BOND upon each attorney of record, and each party not represented by an attorney in the above-referenced District Court action by depositing the same in the United States Post Office at Conrad, Montana in envelopes addressed to the following-named persons at the addresses below, securely sealed and postage prepaid:

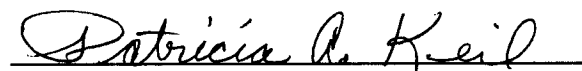
Laura Hodgskiss (Individually and as Personal Representative  
P.O. Box 1367 of the Estate of James R. Brewster)  
Choteau, MT 59422

Jeri Lee Brewster  
P.O. Box 263  
Choteau, MT 59422

Kyle J. Brewster  
P.O. Box 737  
Choteau, MT 59422

Daniel E. Shannon,  
Shannon Legal Services, PC  
401 3<sup>rd</sup> Avenue North  
P.O. Box 1709  
Great Falls, MT 59403-1709

Dated this 4<sup>th</sup> day of July, 2010

  
Patricia A. Keil